

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
ROBERT JON SCHLYER, ) CASE NO. 12-21848 JPK  
 ) Chapter 7  
Debtor. )

ORDER CONCERNING DEFECTIVE SERVICE OF  
MOTION FOR CONTEMPT CITATION FOR VIOLATION  
OF THE AUTOMATIC STAY ("MOTION")

The Motion was filed as record #19 on July 11, 2012. The Motion seeks a citation for alleged violation of 11 U.S.C. § 362(a). Putting aside the issue of whether certain relief requested by the Motion requires an adversary proceeding under Fed.R.Bankr.P. 7001,<sup>1</sup> the Motion was not properly served. A motion initiates a contested matter under Fed.R.Bankr.P. 9014, sub-paragraph (b) of which requires service of the motion in the manner required by Fed.R.Bankr.P. 7004. The entity against whom relief is sought is an entity within the provisions of Fed.R.Bankr.P. 7004(b)(3), and service has not been effected in the manner required by that rule: the certificate of service states that it was made upon an attorney for the entity, which is not effective service.

IT IS ORDERED that the Motion is denied, without prejudice. If a remedy is subsequently pursued by motion, counsel is advised to limit the motion pursuant to footnote 1.

Dated at Hammond, Indiana on July 26, 2012.

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<sup>1</sup> The Motion in part seeks an order determining that the target entity is in contempt of court with respect to violation of 11 U.S.C. § 362. Contempt is a sanction available for violation of a court order: the automatic stay of 11 U.S.C. § 362(a) is not imposed by any order of the court, but rather is a statutory injunction. Therefore, contempt is not an appropriate remedy for alleged violations of 11 U.S.C. § 362(a). Paragraph 2 of the prayer for relief seeks what is in essence an affirmative injunction, which falls within the provisions of Fed.R.Bankr.P. 7001(7). Because the matters alleged by the Motion are not subject to contempt, paragraph 3 of the Motion does not state a claim for relief unless an actual order of the court would be violated. To the extent the Motion seeks recovery of money held in a bank account, the relief would fall within the provisions of Fed.R.Bankr.P. 7001(1). The relief requested by paragraph 4 is permitted by means of a motion, with respect to those elements of relief provided by 11 U.S.C. § 362(k).

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee